

Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

NEW JERSEY BOARD OF PUBLIC
UTILITIES

Petition for Delegated Authority to Implement
Number Conservation Measures

NSD File No. L-00-95

CC Docket
96-98

To: Chief, Common Carrier Bureau

COMMENTS

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SUMMARY

Verizon Wireless does not oppose the New Jersey Board of Public Utilities' ("BPU") request for implementation of thousand block number pooling in New Jersey, to the extent that creation of the pool for LNP-capable carriers does not impact the availability of numbers to serve wireless customers of carriers incapable of providing LNP and thus incapable of participating in the pooling mechanism.

Area code relief activities must precede pooling in NPAs where exhaust is one year or less away, to ensure that non-LNP carriers have necessary numbering resources to serve their customers. Without the institution of immediate area code relief in such areas, carriers will be forced to apply for numbers on an emergency basis and, if those requests are not filled, to turn away customers due to the lack of numbering resources.

Rationing is an inefficient method of distributing the numbering resource and does not ensure that all carriers that have demonstrated need are given numbers to serve their customers. Resource optimization tools (such as utilization review and reclamation), along with implementation of area code relief, where needed, will ensure that numbers are made available to all carriers who demonstrate need.

Finally, the BPU also seeks delegated authority to mandate reporting requirements, define number use categories, etc., to the extent that rules adopted in the *NRO Order* have not yet become effective. This request for additional delegated authority should be denied as moot.

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To: Chief, Common Carrier Bureau

COMMENTS

Verizon Wireless¹ hereby submits its comments, in response to the Bureau's July 7, 2000 Public Notice, on the May 25, 2000 petition of the New Jersey Board of Public Utilities ("BPU") for delegated authority to implement a variety of numbering conservation measures.² BPU seeks authority to implement mandatory one thousand-block number pooling, ration NXXs

¹ Cellco Partnership, doing business as Verizon Wireless, is a new nationwide competitor that offers wireless products and services coast-to-coast, combining certain domestic cellular, paging, and PCS businesses of Bell Atlantic Mobile, Vodafone AirTouch, PrimeCo Personal Communications, L.P., and GTE Wireless. The relevant Bell Atlantic Mobile, Vodafone AirTouch, and PrimeCo businesses were combined on April 3, 2000, pursuant to Commission approval. *See Vodafone AirTouch, Plc, and Bell Atlantic Corporation*, DA 00-721 (Mar. 30, 2000). The relevant GTE Wireless operations were recently combined with Verizon Wireless, pursuant to Commission approval. *See GTE Corporation and Bell Atlantic Corporation*, FCC 00-221 (June 16, 2000).

² Public Notice, *Common Carrier Bureau Seeks Comment on the New Jersey Board of Public Utilities Petition for Delegated Authority to Implement Number Conservation Measures*, NSD file No. L-00-95, DA 00-1508 (CCB July 7, 2000).

for six months following area code relief, and implement other conservation measures set forth in the Commission's *NRO Order*.³

Verizon Wireless does not oppose the implementation of thousand-block number pooling in New Jersey, as long as the creation of a pool does not affect the availability of numbers to serve the customers of carriers that are not capable of providing local number portability ("LNP") and are thus incapable of pooling. According to the BPU Petition, complete exhaust will occur in the 973 NPA in the second quarter of 2001, in the 201 NPA in forth quarter of 2001, and in the 732 NPA in the first quarter of 2001.⁴ It is essential that area code relief *precede* pooling in these northern New Jersey NPAs, where exhaust is less than one year away, to ensure that non-LNP carriers will have numbering resources available to serve their customers.

I. PROMPT AREA CODE RELIEF IS NECESSARY *BEFORE* POOLING IN CERTAIN NPAs TO ENSURE THAT NEEDED NUMBERING RESOURCES WILL BE AVAILABLE TO NON-LNP-CAPABLE CARRIERS

Wireless carriers are not currently LNP-capable and have been exempted from LNP requirements until November 2002.⁵ The Commission has repeatedly held that pooling can be instituted only if adequate provision is made for non-LNP-capable carriers to continue obtaining NXX codes. For example, the *California Delegation Order* placed specific limits on the CPUC's authority:

³ *Numbering Resource Optimization*, CC Docket 99-200, *Report & Order & Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 7574 (2000) (*NRO Order*).

⁴ BPU Petition at 2. Verizon Wireless is aware that the allocation system in these NPAs has recently been restricted further, so as to artificially forestall exhaust.

⁵ *See CTIA Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability*, 14 F.C.C.R. 3092 (1999), *recon. denied*, FCC 00-47, 2000 FCC LEXIS 788 (February 23, 2000). Some wireless carriers (e.g., paging) are exempt from the November 2002 LNP requirement.

Within NPAs that are subject to the pooling trial, non-LNP capable carriers shall have the same access to numbering resources after pooling is implemented that they had prior to the implementation of a pooling regime, *i.e., non-LNP capable carriers shall continue to be able to obtain full NXX codes*. We recognize that conditioning the California Commission's authority to implement a mandatory thousands-block pooling trial on exemption of non-LNP capable carriers from participation in the trial will create a disparity in the way different types of service providers obtain access to numbering resources, in tension with the criteria set forth above. *In order to ensure that consumers may continue to obtain service from non-LNP capable carriers of their choosing, however, we find that for the purposes of this interim delegation, it is necessary to safeguard these carriers' access to numbering resources, while they lack the technical capability to participate in pooling.*⁶

This was echoed in the *NRO Order*, which stated:

We also emphasize that only those carriers that have implemented LNP capability shall be subject to pooling, and a state commission does not have the authority to require LNP capability solely for the purpose of being able to participate in pooling. Moreover, non-LNP capable carriers operating in NPAs that are subject to pooling shall have the same access to numbering resources as they had prior to the implementation of pooling.⁷

Consequently, any delegation of authority to the BPU must be contingent on the BPU *first* making adequate provision for non-LNP-capable carriers to obtain NXX codes on an ongoing basis.

Further, the Commission has repeatedly made clear that pooling, rationing, and other conservation measures are no substitute for NPA relief.⁸ In its *NRO Order*, the Commission

⁶ *California Public Utilities Commission Petition for Delegation of Additional Authority*, 14 F.C.C.R. 17,486 at ¶ 16 (CCB 1999) (emphasis added, footnote omitted) ("*California Delegation Order*").

⁷ *NRO Order* at ¶ 171.

⁸ *Pennsylvania Public Utility Commission, Memorandum Opinion & Order & Order on Reconsideration*, 13 F.C.C.R. 19,009, 19,026-19,029 (1998), *petitions for reconsideration*

(continued...)

again emphasized the need for effective area code relief as an essential numbering resource mechanism:

[S]tate commissions must take all necessary steps to prepare an NPA relief plan when it seeks to implement a pooling trial in an NPA which is in jeopardy. Area code relief is ultimately a federal question, although we have delegated to states authority to handle these matters. *It is our policy that no carriers should be denied numbering resources simply because needed area code relief has not been implemented.* A number of carriers have raised concerns in this proceeding that *some states may not be developing and implementing area code relief plans in a timely manner. We are troubled by these allegations, and we will closely monitor these situations to ensure that federal numbering policies are followed.*⁹

Accordingly, the Common Carrier Bureau has also made area code relief a prerequisite to delegated conservation authority.¹⁰ Last month, the Bureau stated the proposition forcefully:

The grants of authority herein are not intended to allow the state commissions to engage in numbering conservation measures to the exclusion of, or as a substitute for, *unavoidable and timely area code relief.*¹¹

Consistent with this, the Bureau has directed state commissions to “implement area code relief when necessary”:

Although we are giving the state commissions tools that may help to prolong the lives of existing area codes, the state commissions continue to bear the obligation of implementing area code relief when necessary, and we expect the state commissions to fulfill this obligation in a timely manner. Under no circumstances should

(...continued)

pending: Numbering Resource Optimization, CC Docket 99-200, *Notice of Proposed Rulemaking*, 14 F.C.C.R. 10,322, 10,425-10,426 (1999) (“*Numbering Resource Optimization Notice*”).

⁹ *NRO Order* at ¶ 171 (emphasis added).

¹⁰ See *Numbering Resource Optimization*, Order, CC Docket No. 99-200, DA 00-1616 ¶¶ 11, 25, 38 and 66 (CCB July 20, 2000) (*July 20 Delegation Order*), and proceedings cited at ¶ 9 therein.

¹¹ *July 20 Delegation Order*, ¶ 11 (emphasis added).

consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources. For consumers to benefit from the competition envisioned by the 1996 Act, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible.¹²

The Bureau also held that State commissions must "be prepared to implement immediately a 'back-up' NPA relief plan prior to the exhaustion of numbering resources."¹³

Given the imminence of exhaust in the northern New Jersey NPAs, it is imperative that area code relief be ordered *before* the BPU begins proceedings to implement pooling. Non-pooling carriers require numbers in ten-thousands' blocks — full NXX codes — until they

¹² *Id.* (emphasis added).

¹³ *July 20 Delegation Order*, ¶ 17. Again, these recent pronouncements are consistent with prior delegations of authority. The Bureau's *California Delegation Order*, for example, repeatedly maintained that pooling was not to come at the expense of NPA relief:

... [W]e require that in any NPA which is in jeopardy in which the California Commission implements a pooling trial, *the California Commission must take all necessary steps to prepare an NPA relief plan that it may adopt in the event that numbering resources in the NPA at issue are in imminent danger of being exhausted.* This criterion is not intended to require the California Commission to implement an NPA relief plan prior to requiring thousands-block number pooling in California. Rather, we require only that the California Commission must be prepared to implement a "back-up" NPA relief plan prior to the exhaustion of numbering resources in the NPA at issue. *Consumers should never be in the position of being unable to exercise their choice of carrier because that carrier does not have access to numbering resources.*

... We ... reiterate our position that code rationing should not be used as a substitute for area code relief, and therefore, encourage the California Commission to continue to promote numbering policies that facilitate the availability of sufficient numbering resources for all carriers on a nondiscriminatory basis.

California Delegation Order, 14 F.C.C.R. 17,486 at ¶¶ 9, 15, 22, 39 (emphasis added, footnotes omitted).

become LNP-capable. Accordingly, the implementation of pooling will not make numbers available for these carriers. Without area code relief activities, there will be no available NXX codes in the northern New Jersey area codes in the near future; the *only* way for wireless customers to avoid being denied numbers on a competitively neutral basis is to institute immediate area code relief.

Moreover, the Commission must not afford the BPU discretion to determine *when* to order area code relief for those NPAs that are within a year of exhaust. While the Commission rules require that states implement area code relief when necessary, the delegations of authority to states often provide too much leeway to determine when relief is in fact necessary. For example, in authorizing the Nebraska Commission to undertake pooling, the FCC required the Nebraska Commission to adopt a relief plan when “numbering resources in the 402 NPA are in imminent danger of being exhausted.”¹⁴ It was clear from the Nebraska Commission Petition that the NPA at issue was already in imminent danger of exhaust — with exhaust expected before the end of 2000.¹⁵ However, the order did not mandate immediate area code relief in the NPA. In such cases, the FCC should instead make clear that area code relief efforts must be initiated as a prerequisite and necessary corollary to pooling.

Wireless carriers will be left without numbers to meet customer demands if states continue to be given too much discretion to determine when relief efforts must be instituted. In cases where exhaust is a year or less away the FCC must ensure that necessary area code relief efforts are instituted immediately. Otherwise, non-LNP capable carriers and their customers will be unfairly denied access to needed numbers. Moreover, pooling will be most effective where an

¹⁴ July 20 Delegation Order, ¶ 38.

¹⁵ *Id.* ¶¶ 36-37.

area code is not in serious jeopardy and when at least one year of life — without rationing — remains forecasted for that NPA, such as NPA 908.¹⁶ In sum, states should not be authorized to wait for some indeterminate “imminent” exhaust before implementing mandatory pooling; alternatively, the “imminent exhaust” standard should be *defined* to allow at least one year for relief implementation. Moreover, in all events, the one year calculation should not be artificially “bolstered” (and extended) through rationing of codes.

Here, there already *is* imminent danger of exhaust in the 973, 201 and 732 NPAs, and thus any delegation order should require immediate area code relief efforts in those NPAs as a prerequisite to pooling. Despite the longstanding pendency of industry requests for area code relief plans in all four northern NPAs, the BPU has not ordered a “backup” relief plan, to date.¹⁷ Moreover, the industry's consensus request for the overlay form of relief in all four NPAs should have facilitated BPU action to initiate area code relief in the affected NPAs. (The New Jersey Ratepayer Advocate has also joined in the industry's urging that the BPU order relief.) However, it appears that the BPU may not be prepared to order area code relief at this time:

The Board is aware that conservation should not be a substitute for area code relief. Relief has been sought for the 201, 973, 908, and 732 area codes through two dockets, Dkt. Nos. TO98080707 and TO99010034. *Area code relief will be provided if and when necessary through these and/or other petitions filed in the future.*¹⁸

¹⁶ Implementation of relief takes at least one year in most cases, and some state commissions require even longer for the necessary public education and permissive dialing periods. *See State of New York Public Service Comm'n, Opinion and Order Directing a Geographic Split of the 716 NPA*, Opinion No. 00-06, Case 99-C-0800 (May 22, 2000).

¹⁷ For the 908/732 NPAs, the petition for relief was filed in January 1999. In August 1999 NANPA advised the Board that the industry reached consensus to recommend four separate all-services distributed overlays as the means of relief for the 201, 732, 908 and 973 NPAs.

¹⁸ BPU Petition at 2 (emphasis added).

Unless area code relief is immediately ordered, consumers of non-LNP carriers will “be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources,” contrary to the FCC’s prior pronouncements.¹⁹ Thus, in delegating pooling authority to the BPU, the FCC must make clear that “if and when” is *now* for the 973, 201 and 732 NPAs, and that area code relief efforts must now be initiated as a necessary condition.

To confirm, jeopardy of exhaust has long been declared in NPAs 973, 201 and 732. The exhaust dates in the BPU Petition are based on already-spent NPAs with continued rationing proposed to prolong their lives artificially. These dates should not be relied on as a basis for granting pooling, without the institution of necessary area code relief. As the FCC is well aware, rationing extends projected exhaust dates, but does not conserve numbers meaningfully. Again, if the FCC permits mandatory pooling by BPU, the delegation grant should require BPU to first order and implement area code relief in the 973, 201 and 732 NPAs.²⁰

II. RATIONING PROCEDURE FOR SIX MONTHS FOLLOWING AREA CODE RELIEF

The BPU petition seeks authority to “implement a rationing procedure for at least six months following the area code relief plan.”²¹ Rationing is an inefficient means of allocating numbering resources because it assigns numbers arbitrarily, and not based on demonstrated need, as an artificial way to forestall complete number exhaust. Indeed, Verizon Wireless submits that

¹⁹ *July 20 Delegation Order*, ¶ 11. Without immediate area code relief, Verizon Wireless’ forecasted need for numbers will force the company to apply for numbers on an emergency basis. Non-LNP carriers should not be forced to pursue extraordinary relief measures where imminent exhaust has been documented and thus where area code relief is essential.

²⁰ BPU Petition at 2, 3.

²¹ BPU Petition at 4.

rationing has been overused to delay necessary area code relief and other optimization measures and should not be relied on as a conservation measure.

The Commission has now provided, through its *NRO Order*, tools to provide for effective numbering resource utilization and conservation. Utilization data will be reviewed and numbers reclaimed where not used appropriately. The tools now made available to NANPA and the states will ensure effective distribution of the numbering resource and will prevent situations where carriers are not utilizing numbers efficiently. In these circumstances, rationing is an artificial and ineffective scheme and should no longer be deemed an acceptable conservation measure.

Again, where area code relief and pooling are implemented, rationing is not appropriate. Carriers who need numbering resources should not be relegated to filing for extraordinary relief; instead numbers should be obtained on a needs-based showing. Further, after jeopardy has been addressed by the institution of necessary NPA relief and other related measures, there is no apparent justification for maintaining this inefficient system for number distribution.

III. OTHER CONSERVATION MEASURES

The BPU seeks delegated authority to mandate reporting requirements, define number use categories, set rules on applications for number resources, reclaim unused numbers and require sequential number assignments, to the extent the rules adopted in the *NRO Order* have not yet

become effective.²² The rules promulgated in the *NRO Order* have now become effective.²³

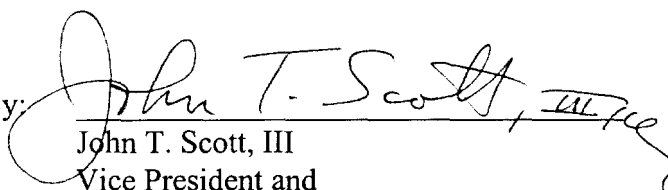
Accordingly, the request for these additional delegations of authority should be denied as moot.

CONCLUSION

For the foregoing reasons, Verizon Wireless does not oppose a limited delegation of authority to the BPU to implement mandatory number pooling for LNP-capable carriers, as long as area code relief is ordered and relief efforts commenced *prior* to initiation of pooling, for any NPA which is within twelve months of projected exhaust. In NPAs where exhaust is imminent, area code relief must be the first priority, because neither pooling nor rationing will suffice to provide needed numbering resources to non-LNP-capable, non-pooling carriers.

Respectfully submitted,

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²² BPU Petition at 4.

²³ 65 Fed. Reg. 37,703 (June 16, 2000). The only exceptions are the August 1, 2000 semiannual utilization and forecast filing date, which has been briefly deferred, and the 45-day reservation limit for reserved numbers, which has been deferred until December 1, 2000.